STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

APPLICATION OF RILEY PERMIAN OPERATING COMPANY, LLC FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 24093**

REPLY IN SUPPORT OF SPUR ENERGY PARTNERS LLC'S MOTION TO DISMISS RILEY PERMIAN OPERATING COMPANY, LLC'S APPLICATION FOR COMPULSORY POOLING

For its reply in support of its Motion to Dismiss Riley Permian Operating Company, LLC's Application for Compulsory Pooling ("Application"), Spur Energy Partners LLC ("Spur") states the following.

I. INTRODUCTION

Riley Permian Operating Company, LLC ("Riley") attempts to circumvent the Division's longstanding requirement that an applicant submit well proposal letters to working interest owners at least 30 days prior to filing a compulsory pooling application and fails to identify any exceptional circumstance that could justify its failure to do so. Riley's application is also materially deficient because it fails to provide notice that the unit includes proximity tracts or identify a proximity tract well and attempts to create an "overlapping" horizontal well spacing unit without identifying any existing affected wells. For these reasons, Riley's Application should be dismissed.

II. ARGUMENT

1. Riley's application should be dismissed due to its failure to provide a timely well proposal.

Riley proffers several theories in an attempt to justify its failure to abide by the 30-day well proposal requirement set out in Order Nos. R-13155 and R-13165, none of which have merit. First,

Riley attempts to argue that Spur is "estopped from its 30-day policy argument"[1] because of "Spur's assurances that Riley could file its Application the first week of December." Response at 6. Riley claims that "Spur made such assurance *knowing* that Riley could not possibly comply with the 30-day policy that Spur now alleges applies to the Application." *Id*. (emphasis in the original). Spur made no such assurances during the November 2, 2023 status conference and Spur's counsel could not have known that Riley "could not possibly comply with the 30-day policy."

Riley agreed to file its application by December 7th (the deadline to file for the January 4, 2024 docket was actually December 5th). *See* 11/2/23 Hearing Transcript at 62:2-16. When the Hearing Examiner asked Riley's counsel how the 30-day rule impacted Riley's ability to file an application, Riley's counsel responded that it would not be a problem. *Id*. at 61:22-25, 62:1, 7-9. Spur's counsel was not tasked with knowing when Riley would send out its well proposal letters, and Spur did not waive the 30-day requirement in any respect. Presumably, when Riley's counsel informed the hearing examiner that there was "[n]o problem" with filing an application the first week of December for the January 2024 docket, he would have known whether Riley had sent out well proposal letters, and if not, that it needed to do so by November 5th.

Not only did Riley fail to submit well proposals 30 days prior to filing its application, it failed to send proposals *at any time* prior to filing. Instead, Riley provided Spur with its well proposal and AFEs via email nine days *after* filing its application. *See* Exh. 2 to Spur's Motion. Riley's belated well proposal is especially concerning since Riley had received notice of Spur's proposed wells in August of 2023, more than 90 days prior to the filing of Spur's application. *See* Exh. A to Spur's Motion at ¶¶ 3, 5. Riley had months to submit a timely well proposal and chose

[1] Riley makes this assertion without setting out any standards for estoppel or reliance on any Division or judicial precedent. *See* Response at 5-6.

not to do so. Therefore, in accordance with Order Nos. R-13155 and R-13165, Riley's application should be dismissed.

Riley also attempts to evade the dismissal of its application by arguing that Order Nos. R-13155 and R-13165 are not binding on this proceeding. To begin with, Riley claims that the 30-day requirement cannot be enforced because it was "promulgated outside of the formal rulemaking" process and therefore violated due process and the State Rule Act. Response at 6-7. None of the case law cited by Riley supports this novel proposition, which would necessarily require the Division to ignore its many practices and policies that are not included in regulations and find that policy guidance included in Division orders is meaningless. *Id*. at 7.

Riley cites *Uhden v. N.M. Oil Conservation Comm'n*, 1991-NMSC-089, in support of its argument that it was entitled to notice and the opportunity to present objections as to the 30-day rule, as well as its argument that a rule of "general applicability should be finalized in a rulemaking hearing, not an adjudicatory hearing." Response at 6-7. Riley's reliance on *Uhden* is misplaced. The *Uhden* Court considered whether "royalty interests reserved by the lessor of an oil and gas estate were materially affected by a state proceeding so as to entitle the lessor to actual notice of the proceedings" and due process protections. 1991-NMSC-089, ¶ 2. *Uhden* has nothing to do with the promulgation of agency rules or with the applicability of Division Orders to subsequent proceedings. Similarly, Riley's citation to *Shovelin v. Cent. N.M. Elec. Coop., Inc.*, 1993-NMSC-015, to support an apparent argument regarding res judicata, collateral estoppel, and stare decisis, is irrelevant. The question presented in *Shovelin* was "whether under the doctrine of collateral estoppel issues resolved in an administrative adjudicative decision should be given preclusive effect in later civil trials." Riley's insistence that it cannot be bound by the 30-day guidance set out in Order Nos. R-13155 and R-13165 because an "order in an adjudicatory hearing is only

binding on the parties to the hearing" is also not supported by Riley's citation to the dissent in *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 525 P.2d 374. Response at 9-10. The excerpt quoted by Riley was set out as a standard for determining whether an administrative order is void for vagueness, not whether an adjudicatory order is binding or provides policy guidance. *McDaniel*, 1974-NMSC-062, 525 P.2d at 381.

Finally, Riley claims it should not be held to the 30-day requirement because "[g]uidelines are not final agency actions and do not create any requirements binding on the public." Response at 8. The Division's longstanding requirement that an applicant provide working interest owners with a well proposal letter and AFEs at least thirty (30) days prior to filing a compulsory pooling application is necessary to ensure good faith negotiation prior to pooling. In Order No. R-13165, the Division expressly sought to "clarify the requirements that it will ordinarily apply in compulsory pooling cases." *See* Order No. R-13165 at 2. Order No. R-13165 is not an agency guideline, but a binding Order issued by the Division's Director. In fact, the Hearing Examiner let all parties in attendance during the November 2, 2023 Division Docket know that he would continue to follow the 30-day well proposal letter procedure set out in Order Nos. R-13155 and R-13165. *See* 11/2/23 Hearing Transcript at 35:18-19.

The Division has long required that thirty days prior to filing a compulsory pooling application, an applicant must send all parties it intends to pool a well proposal that identifies the proposed depth, exact footage locations, and target formation for each proposed well, along with an AFE. *See* Order No. R-13165 at 2. In this instance, Riley failed to provide Spur with a well proposal or AFEs *at any time prior* to filing its Application and failed to identify any exceptional circumstance that could possibly excuse its failure. *See* Exh. A to Spur's Motion at ¶¶ 3, 5. Accordingly, Riley's Application must be dismissed.

2. Riley's Application should also be dismissed because it is incomplete.

Riley's Application is also deficient and subject to dismissal because it fails to state that Riley is proposing a proximity tract unit and fails to identify the proximity tract defining well that would allow Riley to form a 400-acre spacing unit. Riley incorrectly claims that "the proximity well is easily identified from the bottomhole locations stated in the Application." Response at 16. But the Application states only that the bottom hole location for two of the wells is the NW/4 NW/4 of Section 11 and the bottom hole location for three of the wells is the SW/4 NW/4 of Section 11. This information does not provide notice regarding which, if any, of the wells will be located within 330 feet of the quarter-quarter section line separating the N/2 N/2 and S/2 N/2 of Sections 10 and 11 as set out in Rule 19.15.16.15(B)(1)(b).

Riley's application is further deficient due to its failure to identify the existing affected wells for its overlapping spacing unit. Contrary to Riley's assertion in its Response, this information is not "usually proffered as part of the hearing," but is contained in the application so that the applicant can comply with Rule 9.15.16.14(B)(9) NMAC ("a well that will have a completed interval partially in an existing well's spacing unit, and in the same pool or formation, may be drilled *only with the approval of, or, …after notice to all operators and working interests owners or record*").

Riley's claim that it should be allowed to amend its application lacks merit. On June 11, 2020, the Division issued its notice regarding deficiencies in applications, a copy of which is attached as Exhibit A. As stated in the notice, material changes or deficiencies in applications that impact public notice must be denied. Thus, the Division has not applied the district court standards that govern motions to dismiss in this circumstance and those standards have no bearing here. Riley's application should be dismissed because it fails to provide notice it seeks approval of a

proximity tract unit, fails to identify the proximity defining well, and fails to identify the existing affected wells in its proposed overlapping spacing unit. All of these problems are exacerbated by Riley's failure to provide a timely well proposal as required by Order No. R-13165.

III. CONCLUSION

For the foregoing reasons, and the reasons set out in Spur's Motion, Riley's Application should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2024 I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail:

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Energy, Minerals and Natural Resources Department

NOTICE

MATERIAL CHANGES OR DEFICIENCIES IN APPLICATIONS SUBMITTED TO THE OCD ENGINEERING BUREAU

EFFECTIVE June 11, 2020

The OCD Engineering Bureau (OCD) gives notice that it intends to deny applications for which the applicant proposes a material change during the review process or when a material deficiency is identified during the administrative or technical review process. A change or deficiency is material if its existence or nonexistence is of consequence to the public notice or substantive rules for the application. If OCD denies an application, the applicant may refile through the fee portal.

OCD provides the following non-exclusive list of common material changes and deficiencies:

- **Compulsory Pooling**
  - Change to horizontal spacing unit
  - Change to financial evidence, including expenditures or risk charge
  - Failure to completely and accurately notice as required by 19.15.4.12 NMAC

- **Authorization to Inject**
  - Change to surface or bottom-hole location that results in a new "affected person" as defined in 19.15.2.7(A)(8) NMAC. [Note: If the change of location does not result in a new "affected person", the applicant must re-notice the application to all previously identified "affected persons."].
  - Change to injection interval
  - Failure to completely and accurately provide notice as required by 19.15.26.8(C) NMAC

- **Non-Standard Location**
  - Change to first or last take point resulting in increased encroachment
  - Failure to completely and accurately provide notice as required by 19.15.4.12 NMAC for hearings and 19.15.15.13 NMAC for administrative applications

- **Downhole Commingling**
  - Change or addition of pool
  - Changes to allocation method made by the applicant
  - Failure to completely and accurately provide notice as required by 19.15.12.11(C) NMAC

- **Surface Commingling**
  - Change or addition of lease
  - Change or addition of pool
  - Change to allocation method made by the applicant
  - Failure to completely and accurately provide notice as required by 19.15.12.10(C)(4) NMAC

- **Off-Lease Storage and Measurement**
  - Change or addition of lease
  - Change or addition of pool
  - Change to location of storage facility or measurement configuration
  - Failure to completely and accurately provide notice as required by 19.15.23.9(A)(5) NMAC

- **OCD Hearing Applications**
  - Change of Operator Name
  - Change in Operator OGRID Number